AGENDA

WATER POLLUTION CONTROL ADVISORY COUNCIL
ROOM 111 METCALF BUILDING HELENA[1]

NOTE: Interested persons, members of the public, and the media are welcome to attend at the location stated above. Reasonable accommodations will be made for persons with disabilities who wish to participate in this meeting. Please contact Hannah Riedl by telephone (406-444-0549) or by e-mail (Hannah.Riedl@mt.gov) no later than 24 hours prior to the meeting to advise of the nature of the accommodation needed.

November 9, 2018
10:00 A.M.

10:00	**Call to Order**	**Trevor Selch**
10:02	**Approval of Agenda**	**Trevor Selch**
10:05	**Welcome New Councilmembers and Introductions**	**Trevor Selch**
10:20	**Approval of Minutes from July 13 Meeting**	**Trevor Selch**
Action Items		
10:25	**Proposed Rule for Lagoon and Well Setback**	**Eric Regensburger**
10:50	**Proposed Groundwater Standards**	**Mike Suplee**
11:15	**General Public Comment** During this time, members of the public may comment on any public matter within the jurisdiction of the Council that is not otherwise on the meeting agenda. For items on this meeting agenda, time for public comment will be provided after Council discussion of each item.	**Trevor Selch**
11:25	**Agenda Items for Upcoming Meetings**	**Hannah Riedl**
11:30	**Schedule 1st Meeting of 2019**	**Hannah Riedl**
11:35	**Adjourn**	**Trevor Selch**

[1] To view conference presentations, Join Skype Meeting Trouble Joining? Try Skype Web App
If your computer does not have audio capability, join by phone: 406-444-4647, access code: 730894
Forgot your dial-in PIN? | Help

DRAFT MEETING MINUTES
WATER POLLUTION CONTROL ADVISORY COUNCIL
10:00 am, Friday, July 13, 2018
Metcalf Building
1520 E. Sixth Ave., Helena, MT 59620

PRESENT

Councilmembers Present
Earl Salley
Stevie Neuman
Michael Wendland
Craig Workman (phone)
Adam Sigler (phone)
Karen Sanchez (phone)

Others Present
Hannah Riedl, DEQ
Jason Garber, DEQ
Peggy Trenk, TRSA
Eric Urban, DEQ
Eric Sivers, DEQ
Margarite Thomas, DEQ
Eric Regensburger, DEQ

Councilmembers Absent:
Trevor Selch

CALL TO ORDER

Vice Chair Salley called the meeting to order at 10:10.

APPROVAL OF AGENDA

Vice Chair Salley brought forward the approval of the agenda. The move was seconded.

APPROVAL OF MINUTES

Vice Chair Salley brought forward approval of May meeting minutes. There being no changes, Councilmember Wendland moved to accept the minutes. Councilmember Neuman seconded, and the minutes were approved as recorded.

ACTION ITEMS

CAFO General Permit Renewal—Jon Kenning

Confined Animal Feeding Operations (CAFOs) are associated with animal confinement, dirt feed lots, and waste lagoons similar to a lagoon at a waste water treatment plant in a small town. The lagoons are different in the sense that WWTPs actually discharge—water is treated and then runs out into a creek. At a CAFO, manure is collected and put out on farmland, not discharged into a creek. As this permit was developed, a lot of thought went into developing nutrient management plans and putting manure to beneficial use. Up until about 10 years ago, the requirements in the permit were straightforward. Near 2000, EPA found themselves under litigation from groups on all sides. This resulted in raising the bar on permit requirements. Our last renewal in 2013 was a bit of a shock for permittees. For this current renewal, there have been no federal rule changes, so we're trying to use this opportunity to learn from experience on the ground, still meet federal requirements, but make it easier for permittees to comply without hiring a consultant to help navigate the regulations.

The CAFO permit has 3 general parts. First, the farm site, where the animals are kept. This lays out what happens with the manure and its stored. Most sites use an underfloor pit or holding tank—they don't use a lagoon. The whole point of this section is how to collect materials and prevent them from ending up in state's waterbodies. There are common sense setbacks and lagoon liner requirements. Requirements in the 2nd section of the permit, the nutrient management plan (NMP), increase substantially. Historically, a NMP was an estimate of manure that could be put on a field. Now rules require numerous tests, including soil and water tests, to inform a calculation of the exact agronomic rate that manure can be applied without infiltrating groundwater or running off into creeks and streams. The NMP has gone from 1 page in the permit to 20 pages. The 3rd part of the permit, monitoring and record keeping, has historically been simple keeping of feed receipts and records of number of animals. Now required to keep account of inspections, rainfall, etc. We, DEQ, have changed this section to make it more of a simple check list, rather than a narrative, to help permittees keep track of recordkeeping.

The current number that makes a livestock operation a CAFO is 1,000 head of confined cattle, or equivalent number of swine, sheep, poultry. Unfortunately, one thing we see is that 1,000 head of cattle is not a lot of cattle in today's market. People often feel the permit requirements make them go bigger. People will either go way over the 1,000 head of cattle limit, or go just below it.

The floor opened to questions.

Councilmember Nueman asked how to account of head of animals if you have multiple types of animals. Mr. Kenning explained historically the different animals were added together to meet the 1,000 head of cattle rule, but now it is not additive.

Councilmember Sigler asked if Tommy Bass has been involved in conversations. Mr. Kenning answered yes, he has consulted with him and NRCS developing the CAFO permit. Councilmember Sigler also asked if agronomic rates were for nitrogen and phosphorus?

Mr. Kenning clarified it's an agronomic rate for total nitrogen and an index for total phosphorus. Phosphorus binds to soil, so the index helps account for risk of run off. If the risk of run off is high enough, then an agronomic rate is calculated.

Councilmember Nueman asked how many CAFOs are in the state. Mr. Kenning answered about 140, dominated by Hutterite colonies.

Councilmember Nueman asked if there are government programs to help with meeting permit requirements? Mr. Kenning said DEQ provides free consultation, and NRCS provides assistance through their EQIP (Environmental Quality Incentives Program), and they provide help with things like the nutrient management plan.

There were no further questions from the Council or the public.

401 Certification Rule Change—Jason Garber

401 Certification is a state water quality certification for federal permits and licenses that authorize discharges to waters of the state. The federal permits are 404 permits issued by the Army Corps of Engineers and the federal licenses are FERC (Federal Energy Regulatory Commission) projects for hydropower facilities. MT mostly deals with the section 404 dredge and fill permits. We average about 20 401 certifications for 404 permits each year.

The proposed amendments to the rule (17.30.101-109) look to build in flexibility to coordinate with federal partners. This is important because a 401 certification is always a component of a federal permitting or licensing project. Reviews from each agency are done at the same time and can drive changes in design. Montana's 401 Certification timeline in the current rule does not mesh very well with other agency's review schedules.

The first major rule change is in section 17.30.103. We clarified an application is not complete until all information and the fee have been received. Additionally, there used to be an automatic trigger that deemed an application complete after 30 days receipt. That's problematic because applications will be sent to the Corp, and the Corps will not realize that DEQ needs the information as well.

In 17.30.106, we are proposing to change language that waives the 401 certification if the Department does not provide a determination within 30 days. That's problematic because it can take DEQ out of the game if other coordinating agencies do not share application information with DEQ or attempt to "wait us out".

A final substantive change was to 17.30.108, involving public notice. We do 30 day public notices in conjunction with the Corps' as long as the application has been deemed complete. We send it out to a list of stakeholders and we post it on our website; however, we struck language that required putting public notices in newspapers. Often in rural Montana, we cannot even find a newspaper. We feel with the list of stakeholders and the website we are spreading the message far and wide.

This rule has not been updated since its inception.

There were no questions from the Council or the public.

Councilmember Wendland moved to proceed with 401 certification rule changes to the Board. None were opposed, and so the Council recommended moving forward with rulemaking.

BREIFING ITEMS

Establishing Lagoon and Water Well Setbacks - Eric Urban

This is an introduction to a topic that will have future rulemaking for lagoons and the siting of a well. The topic will come back to the Council in a more formal matter. I want to bring the issue to the Council now so members have enough time to bring the issue to constituents that may be interested.

In 2017, Representative Walt Sales carried a bill to remove numeric requirements for how close a lagoon can be placed to a well. HB368 added new language requiring the Department to established new rules about setbacks between lagoons and wells, and struck language that had a specific numeric distance (500 ft) between the two.

The 500 ft setback is directly related to the CAFO world, where good intentions could defy common sense, and regulations don't always make sense. Take this example. A CAFO operator went to the NRCS for assistance complying with water management. NRCS approached the Board with money and expertise to do this, but found the lagoon placement was within 500 feet of a well used for livestock. So, operators cap the well, build a lagoon, go to DNRC's water driller regulations that allow a well to be drilled within 100 feet of a lagoon, and re-drill their well. This isn't where regulation should take us.

For this rule to work, DNRC's rules need to comply as well. We are proposing to the Board to change rules, and Department is proposing to modify Department rules for subdivisions, and the Board for water well contractors will be looking to change their rules.

Mr. Urban paused for questions.

Councilmember Sigler asked whether the impetus of the rule is the protection of well waters, or preventing wells from being installed that could act as groundwater contamination vector. Mr. Urban said the goal is to protect the quality of water. There is the potential for contamination problems, but those regulations fall under the water well driller world. Councilmember Sigler followed up by asking if the use of the well is considered. Mr. Urban said no because changing the use of wells is not regulated and can change quickly.

Councilmember Sanchez pointed out that from a public works standpoint, the current regulations are easy--just make sure no drinking water wells are within 500 ft. This new rulemaking will make it more complex. The second comment is that lagoons are lined, and she asked if the model assumes all lagoons are leaking?

Mr. Urban spoke to her first comment and noted that the current state has already eliminated the 500 ft requirement, and that the 500 feet was arbitrary—there was no value added to the decision where to site a well. The new rules seek simple approaches to find scientifically-based separation distances.

Mr. Urban showed some schematics describing how there will be an automatic setback appropriate for all wells and worse case scenarios that is based on Eric Regensburger's work looking at geology, groundwater, wells, and lagoons across MT. The next simplest approach is looking at local site conditions and finding justifications for why a well and lagoon can be closer together, like groundwater is flowing away from the water well, or there is an impervious geological layer. The most complex approach is a pathogen removal model that looks at the life cycle of a virus, time of travel, and local site conditions to predict a kill rate for pathogens that keep the water well safe. This speaks to Ms. Sanchez' concern that the rule could get too challenging for easy utility. It took Mr. Regensburger a couple hours to complete the exercise, so we don't feel it will be arduous, and the separation will not be arbitrary but scientifically-based.

Turned over to Council for questions. There were none. Mr. Urban encouraged the Council to reach out to their constituents.

General Nutrient Variances—Updates and FAQs – Eric Urban
DEQ developed numeric nutrient criteria for total nitrogen and total phosphorus (DEQ 12A). We recognized that the standards were small numbers, and that current technology did not allow for water treatment to those levels. DEQ was one of the few states to also embrace the idea of a nutrient variance (DEQ 12B), that provides for a slow process for meeting the nutrient standards and improving water quality treatment. Since 2014 when DEQ published DEQ 12A and 12B, the EPA has made changes to their rules. May of 2018 was the most recent MT rule change.

In 2014 the plan was to have variances available to anyone who asked. The statute even states "the Department shall provide the variance." Despite the regulation change from EPA, DEQ still maintains in state law that we will provide the variance to those who need it. The EPA wants every community and

permitee to do an economic test to ensure the community has done enough treatment. We now have 30 variances approved in permits. They are working, we have seen nitrogen and phosphorus reductions.

The real conundrum comes when there is a facility that isn't easily addressed with an economic analysis. Our economic analysis looks at the median household income of towns. It's a different economic analysis looking at profitability for private entities. Another entity would be publicly-owned facilities without a specific economic test. To that end, DEQ is running an economic analysis in-house in 2018.

Councilmember Sanchez clarified that for communities without the wherewithal to conduct the economic analysis, DEQ is running the analysis for them? Mr. Urban said that is correct. She also asked if a permit holder is a state entity, but not a city or town, is it eligible for the general variance? Mr. Urban agreed that yes, the general variance is not available yet because the economic analysis has not been conducted. For example, it's complicated to ask how much the state of Montana could afford for water treatment for state-owned facilities. However, those types of facilities are on DEQ's list of entities to answer that question for. We recommend those entities do not apply for the variance until DEQ has completed the economic analysis.

There were no further questions from the Council or the public.

WPCAC REPORT TO THE WATER POLICY INTERIM COMMITTEE

Ms. Riedl made the Council aware that, barring a special session, Vice Chair Salley will report to WPIC on Tuesday providing them an update on work that WPCAC has conducted in the past couple years. If there are any topics the Council would like to bring to the legislative body, they should let Ms. Riedl or Mr. Salley know.

Mr. Wendland asked for clarification what it has to do with the special session. Mr. Riedl responded that if the legislature votes to hold the special session, the Interim Committee would meet later in the week.

GENERAL PUBLIC COMENT

No comments.

AGENDA ITEMS FOR UPCOMING MEETINGS

Ms. Riedl updated that the Belt abandoned mine lands update will be rescheduled for September's meeting. The Governor's office is doing a review of current councilmembers and new applicants to the Council in the next couple weeks.

ADJOURN

Motion to adjourn by Vice Chair Earl Salley. Meeting adjourned at 11:20.

Montana Department of Environmental Quality

November 1, 2018

TO: Members of the Water Pollution Control Advisory Council & the public
FROM: Eric Urban, Water Quality Planning Bureau
MEETING DATE: November 9, 2018
SUBJECT: Proposed rule for setbacks between sewage lagoons and water wells as required by HB 368.

ACTION REQUIRED BY COUNCIL:
Requesting a recommendation from the council to take the proposed rule to the BER and Department for rulemaking.

BACKGROUND:
HB 368 was adopted in 2017 by the legislature, it required the DEQ to establish rules for setbacks between sewage lagoons and water wells. The current setback is 500 feet regardless of site-specific conditions. The purpose of the setback is to protect water wells from bacterial and viral (pathogenic) contamination. The sponsor of the bill wanted the new setbacks to be site-specific and scientifically based.

The proposed rule applies a default setback of 1,000 feet unless site-specific conditions indicate a shorter distance is appropriate. The minimum setback allowed is 100 feet. The proposed rule provides several methods to decrease the setback from the default distance of 1,000 feet. These methods include: data that demonstrates the ground water beneath the sewage lagoon and water well are not hydraulically connected; soil, aquifer, and well data that demonstrates an adequate amount of natural pathogen reduction before any sewage discharge to groundwater reaches the water well; or continuous disinfection of the water well.

The new rule will allow setback distances between sewage lagoons and water wells to be based on site conditions instead of a single distance. This will result in some setbacks that are up to double the current setback requirement and some that are much shorter but still protect the water quality of the water well.

RECOMMENDATION:
The Department recommends that the council allow the Department to take the proposed rule forward to the BER and Department for rulemaking.

Please contact us with any questions Eric Regensburger, DEQ – Metcalf Building P.O. Box 200901, Helena, MT 59620; 406.444.6714; eregensburger@mt.gov .

Attachments:
1. Copy of the proposed rule and statement of reasonable necessity.
2. Three diagrams that will be used to briefly explain the proposed rule to the council.

Montana Department of Environmental Quality

November 1, 2018

TO: Members of the Water Pollution Control Advisory Council & the public
FROM: Mike Suplee, Standards and Modeling, Water Quality Planning Bureau
MEETING DATE: November 9, 2018
SUBJECT: Water Quality Standards & Modeling Section Proposed Rulemaking

ACTION REQUIRED BY COUNCIL:
Action item. We are looking for a recommendation to take the proposed rulemaking to the BER at their next meeting (occurring December 7th, 2018).

BACKGROUND:
The rulemaking consists of six new groundwater human health criteria to be added to Department Circular DEQ-7. The six criteria are for: diallate; dioxane, 1,4-; iron; manganese; perfluorooctane sulfonate (PFOS); and perfluorooctanoic acid (PFOA). Since these are groundwater criteria, all were derived under the assumption that exposure is through drinking water only (no accounting for exposure through consumption of fish is made).

DEQ's Hazardous Materials Program of the Waste Management and Remediation Division requested the inclusion of diallate. Hazardous waste permitted facilities must comply with cleanup standards in Circular DEQ-7; presently, a standard for diallate is not provided. Diallate is a chemical of concern in groundwater at a hazardous waste permitted herbicide formulating plant located in Billings, Montana. Including diallate in DEQ-7 will provide the Hazardous Materials Program with a more enforceable cleanup standard. Dioxane, 1,4, PFOS, PFOA, and iron are also considered important criteria to the Waste Management and Remediation Division as cleanup endpoints for remedial activities they are working on. Further, PFOS and PFOA are included in the 2016 EPA Office of Water Health Advisories.

Manganese used to be in DEQ-7 years ago as an aesthetics issue in drinking water (taste, and brown staining of sinks, etc.), but was removed in 2012. But scientific research has demonstrated that excessive levels can have neurobehavioral and neurocognitive impacts to infants (0-6 months) and the new criterion has been derived for this most-sensitive population. Manganese is also considered an important criterion to the Waste Management and Remediation Division as a cleanup endpoint. In the near future, DEQ's Public Water Supply Bureau (within the Water Quality Division) is planning to develop criteria and rules for addressing manganese in all public water supply systems.

RECOMMENDATION:
DEQ requests that WPCAC recommend that DEQ take the proposed rulemaking to the BER as proposed.

Please contact us, with any questions to: Michael Suplee, Ph.D., DEQ – Metcalf Building P.O. Box 200901, Helena, MT 59620; 406.444.0831; msuplee@mt.gov

Attachments: Draft DEQ-7, draft rule and statement of reasonable necessity to be included with presentation materials.